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1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF DELAWARE

3 PHILLIPS, L.G., LCD CO., LTD,)

4)
Plaintiffs,) C.A. No. 04-343(JJF)

5)
v.)

6)
TATUNG CO., TATUNG COMPANY OF)
7 AMERICA, INC., and VIEWSONIC)
CORPORATION,)

8)
Defendants.)

9
10 Hearing of above matter taken pursuant to notice
before Renee A. Meyers, Registered Professional Reporter
and Notary Public, in the law offices of BLANK ROME,
11 LLP, 1201 North Market Street, Wilmington, Delaware, on
Tuesday, August 7, 2007, beginning at approximately 3:30
12 p.m., there being present:

13 BEFORE:THE HONOROABLE VINCENT J. POPPITI, SPECIAL MASTER

14 APPEARANCES:

15 THE BAYARD FIRM
RICHARD D. KIRK, ESQ.
16 222 Delaware Avenue, Suite 900
Wilmington, Delaware 19899
17 for Plaintiffs

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21 CORBETT & WILCOX
Registered Professional Reporters
230 North Market Street Wilmington, DE 19899
22 (302) 571-0510
www.corbettreporting.com
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24

2

1 APPEARANCES (Continued):

2

3 MCKENNA, LONG & ALDRIDGE, LLP
CASS W. CHRISTENSON, ESQ.
REL S. AMBROZY, ESQ.
4 DEREK AUITO, ESQ.
LORA BRZEZYNSKI, ESQ.
5 1900 K Street, N.W.
Washington, D.C. 20006
6 for Plaintiffs

7 RICHARDS LAYTON & FINGER
FREDERICK L. COTTRELL, III, ESQ.
8 ANNE SHEA GAZA, ESQ.
One Rodney Square
9 Wilmington, Delaware 19801
for Defendant Tatung Co.

10 GREENBERG TRAURIG LLP
11 FRANK MERIDETH, ESQ.
VALERIE HO, ESQ.
12 MARK KREISMAN, ESQ.
2450 Colorado Avenue, Suite 400E
13 Santa Monica, California 90404
for Defendant Tatung Company of America, Inc.

14 CONNOLLY BOVE LODGE & HUTZ LLP
15 M. EDWARD DANBERG, ESQ.
1007 North Orange Street
16 Wilmington, Delaware 19899

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for Defendant Viewsonic Corporation

17

BINGHAM McCUTCHEN LLP

18

MANUEL NELSON, ESQ.

TRACY ROMAN, ESQ.

19

355 South Grand Avenue

Los Angeles, California 90071-3106

20

for Defendant Viewsonic Corporation

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22

23

24

3

1 SPECIAL MASTER POPPITI: Mr. Kirk, please.

2 MR. KIRK: Yes, Your Honor. This is Richard

3 Kirk for The Bayard Firm for the plaintiff LG Phillips,

4 LCD Company, Ltd.

5 With me on the line from Washington, from

6 the firm of McKenna, Long & Aldridge, are my colleagues,

7 Cass Christenson, Lora Brzezynski, Rel Ambrozy, and

8 Derek Auito.

9 MS. GAZA: Good afternoon, Your Honor, Anne

10 Gaza from Richards, Layton & Finger on behalf of the

11 Tatung defendants.

12 With me on the line is Fred Cottrell as well

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13 as Frank Merideth, Valerie Ho, and Mark Kreisman from
14 the law firm of Greenberg Traurig.

15 MR. DANBERG: Good afternoon, Your Honor.
16 Ed Danberg at Connolly, Bove.

17 With me is Manuel Nelson and Tracy Roman.

18 SPECIAL MASTER POPPITI: Thank you very
19 much.

20 Let us use the agenda that was sent over
21 yesterday for purposes of addressing the issues
22 contained in that agenda. The first on the agenda is
23 the status of LPL's supplemental document production to
24 ViewSonic, and that was covered in ViewSonic's 7/27

4

1 submission and LPL's 8/3 submission and in ViewSonic's
2 8/3 submission, and I have that marked as DM 37.

3 MR. NELSON: Your Honor, I will be
4 addressing the issues on behalf of ViewSonic. Shall I
5 proceed?

6 SPECIAL MASTER POPPITI: Yes, please.

7 MR. NELSON: Just to recap, Your Honor, how
8 we got here, on June 28th, we had a long hearing where

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9 you ordered LPL to produce documents in response to
10 various requests for production of documents from
11 ViewSonic.

12 On July 13th, we had a hearing because the
13 issue of burden of all that production came up and LPL
14 proposed, as a preliminary matter, to provide a limited
15 production and to see where we'd be based upon the
16 review of that limited production and Your Honor thought
17 that was an acceptable preliminary approach.

18 We have now received approximately 3,000
19 pages of production from LPL. But where we filed
20 ourselves, Your Honor, is that, as you can see from the
21 correspondence that's attached as exhibits to our
22 submissions of August 3rd, we have identified somewhere
23 in the order of 250 pages of drawings that are either
24 illegible or very difficult to read, on the one hand,

5

1 and No. 2, while that's not necessarily explicitly
2 stated in our submission, those drawings that are
3 legible aren't -- do not provide sufficient details
4 regarding the physical characteristics of the modules

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5 for us to be able to determine with certainty where
6 fastening elements are on the rear side or from the
7 rearview of a module.

8 And what I mean by that is perhaps I see a
9 little circle with a cross in it that looks like a
10 Phillips head screw, but because that drawing may not
11 have a parts lists, there is no identification of that
12 being, in fact, a screw. Because that particular image
13 is really a two-dimensional drawing from above the back,
14 you don't know what layer that screw, if it is a screw,
15 is placed; is it actually on the rear surface of the
16 module? Does it connect the back light unit to the
17 module? Or is it in an embedded layer?

18 So we are in a position where we actually
19 aren't able to discern the physical characteristics that
20 we need for this case.

21 So where that leads us today, Your Honor, is
22 we didn't submit all of the illegible documents for the
23 August 3rd submission because we didn't think we'd waste
24 your time looking at what's not legible.

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1 SPECIAL MASTER POPPITI: I appreciate that.

2 MR. NELSON: What we want to propose, and
3 what we proposed to LPL, is what we really want are
4 samples of their products. The reason we want samples
5 is because there is no denying what the physical
6 characteristics of that particular module are once we
7 have the sample in our hand.

8 We have produced samples of our monitors to
9 LPL for inspection or purchase and we have done it for
10 somewhere in the order of 150 monitors. We are just
11 asking that they provide samples for the products that
12 they have identified in their documents.

13 We are going to still continue along with
14 the preliminary proposal that Your Honor accepted that
15 was made by LPL, but we'd like to add to that list of
16 what's being produced samples of the products, both the
17 prior art products and the products that were made,
18 sold, offered for sale after 1999.

19 And then, just to tie this together, I think
20 one of the issues might be whether we have actually a
21 request for production of samples. And I don't know if
22 Your Honor recalls, but during the June 28th hearing, we
23 discussed ViewSonic's request for production No. 128.

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24 And request for production No. 128 actually does request

7

1 samples.

2 At the time of the June 28th hearing, you
3 accepted LPL's objection that that request was overly
4 broad. However, once we started going down the path of
5 narrowing the production because of burden on -- and
6 when we actually adopted LPL's position on July 13th, in
7 my opinion, and out of fairness, we should have actually
8 gone back and revisited request for production 128,
9 which involves the request for samples because, really,
10 without the samples, we have got a lot of documents that
11 are, A, either illegible, or, B, do not give us the
12 features that we need to be able to have our expert
13 identify what are the precise fastening elements or
14 items that could be fastening elements on the rear
15 surface of the LCD module.

16 That's the first part of our petition, is we
17 request samples of their products.

18 SPECIAL MASTER POPPITI: Let me ask this
19 question: I gather, based on the communication of the

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20 correspondence that I have read, and I expect, based on
21 what you are telling me now, that the clarity of the
22 production, on paper, is not going to improve? Is that
23 what I am hearing LPL say? What you have is what you
24 have given and the clarity is not going to get any

8

1 better with looking at other documents?

2 MR. CHRISTENSON: Your Honor, the answer to
3 that question is yes in part and no in part.

4 In part, that's correct. We have documents
5 for which we have produced the best available copies and
6 they show what they show and we cannot provide better
7 copies. In some cases, we have been able to provide
8 better copies and we are in the process now of providing
9 additional better copies for certain pages that were
10 just recently identified by ViewSonic as being some of
11 the pages they say are not legible, and that's part of
12 the basis for them seeking module samples at this point.
13 So I think some of those issues are likely to be cured
14 but not all of those issues are likely to be cured.

15 I think it's also important to point out

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16 that the documents that we have do provide -- that we
17 have produced do provide the type of information that
18 was requested in the document request, and that
19 information relates to the parts of the modules that LPL
20 makes and how those modules are assembled.

21 SPECIAL MASTER POPPITI: Let me make an
22 observation about that, the last statement. I am
23 certainly not in a position, based on what I have been
24 given, to make that judgment, and nor would I expect,

9

1 and I could be wrong about this, that you want to be
2 sitting with me in a courtroom and literally pointing
3 and clicking to show me what you have just said because
4 I would expect that that labor, I would expect it would
5 be, No. 1, intense, and unnecessary; is that a fair
6 comment?

7 MR. CHRISTENSON: Your Honor, I think that
8 sounds like a fair comment. We would want to be as
9 efficient as we can be and I think your observations are
10 accurate.

11 SPECIAL MASTER POPPITI: So let me see if I

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12 understand. You are making, and I want some definition
13 to this, you are making best efforts to give best copy,
14 and the roll out is not complete yet?

15 MR. CHRISTENSON: That's correct. We have
16 produced -- in some cases, we were able to go back for
17 documents identified initially by ViewSonic, we were
18 able to, essentially, reformat those documents on our
19 end and in a way that provided better resolution and
20 produce those copies.

21 Some documents are what they are. We don't
22 have any way to improve the legibility. Then there are
23 some additional documents recently identified that we
24 are going to reproduce in a different format that we

10

1 think would give better legibility.

2 SPECIAL MASTER POPPITI: And have you all
3 taken the opportunity to go through the documents for
4 purposes of determining that category, "They are what
5 they are," or is that yet to be done?

6 MR. CHRISTENSON: Your Honor, I believe that
7 those documents were identified by ViewSonic in a letter

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8 dated August 2nd at page 3.

9 SPECIAL MASTER POPPITI: Right.

10 MR. CHRISTENSON: And those are the
11 documents that we have been working to provide improved
12 copies.

13 SPECIAL MASTER POPPITI: I expect, and tell
14 me, from ViewSonic's perspective, that that process
15 should certainly continue, and I think I just heard both
16 of you saying that it is continuing and I expect you
17 both agree it should continue?

18 MR. NELSON: Yes. From ViewSonic's
19 perspective, the improved legibility should continue,
20 but that doesn't foreclose our need for samples. In
21 fact, if you could, I'd like to turn to Exhibit E of
22 LPL's August 3rd submission.

23 SPECIAL MASTER POPPITI: Exhibit E?

24 MR. NELSON: Yeah. We can actually start

11

1 with Exhibit C if you'd like.

2 SPECIAL MASTER POPPITI: I will start
3 wherever you tell me to start.

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4 MR. NELSON: Why don't we start with Exhibit

5 C.

6 SPECIAL MASTER POPPITI: I am at Exhibit C

7 and that is correspondence dated July the 31st, 2007,

8 from Mr. Auito?

9 MR. NELSON: Correct. And in Exhibit C, you

10 will see that they produced replacement drawings for

11 roughly 40 pages we identified, 40 pages of drawings

12 that we identified. They were able to provide

13 replacement drawings. Just so Your Honor is aware, we

14 identified somewhere along the order of 77 pages of

15 drawings that needed to be replaced, but they were able

16 to replace 40 of those 77 drawings. The rest will not

17 be able to be replaced.

18 That bates span, if you notice, is LPL 21145

19 to 21187. That's the bates span of replacement

20 drawings, 21145 to 21187. It will include the No.

21 21152.

22 SPECIAL MASTER POPPITI: I see that.

23 MR. NELSON: If we turn to Exhibit E.

24 SPECIAL MASTER POPPITI: Okay.

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12

1 MR. NELSON: Exhibit E is Bates No. 21152.

2 It's one of those replacement drawings. This is the
3 best they are going to be able to produce with respect
4 to that drawing.

5 SPECIAL MASTER POPPITI: I can tell you I
6 looked at it and I can tell you it wasn't, from this lay
7 person's eye, it wasn't very helpful, and I gather you
8 are telling me, from your trained eye, it's not helpful.

9 MR. NELSON: Not only not helpful, there is
10 no date on the document, there's no model on the
11 document. I can't tell where the screws are. It's
12 absolutely not helpful. The replacement documents not
13 going to save the day in this case.

14 And one other, if you would like me to point
15 out another example that's been submitted by LPL in
16 their exhibits, I will be glad to do so.

17 SPECIAL MASTER POPPITI: Okay.

18 MR. NELSON: If you want to turn to Exhibit
19 F, Your Honor, the very next exhibit, on August 3rd, we
20 have been -- I don't know if Your Honor recalls, we have
21 been requesting documents that showed the assembly of
22 LPL's modules for a long time now, and that's actually

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23 the crux of why we want the samples is because we can't
24 tell how these modules are actually assembled from

13

1 two-dimensional figures.

2 Exhibit F is an example of a service manual
3 that they have just produced on August 3rd. If we turn
4 to what is page 10 of Exhibit F, pages 10 and 11.

5 SPECIAL MASTER POPPITI: I am there, 10 and
6 11.

7 MR. NELSON: 10 is the best exploded-view
8 document that they have ever produced, and 11 happens to
9 be the parts list that corresponds with that exploded
10 view, so it's helpful because we get to see that item
11 No. 7 in the exploded view is actually a screw and there
12 are a couple of the screws. So, this is actually a
13 reasonable document because it does actually break it
14 down into three dimensions and so we can tell what layer
15 that screw is on.

16 Unfortunately, Your Honor, we have been
17 advised that they only have nine of these service
18 manuals, that they have produced all of the service

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19 manuals that correspond to the top 10 products that they
20 have since 1999, and just by simple arithmetic, that
21 would be somewhere on the order of more than 50
22 products, so they have produced nine service manuals,
23 and, of course, they don't have any service manuals for
24 any of the products that were sold prior to 1999 so that

14

1 would be prior art.

2 So, this is best document I have seen in
3 LPL's production, and I only have nine of them.

4 SPECIAL MASTER POPPITI: Okay. Well, then,
5 let's turn to the discussion from earlier in the day,
6 but please remind me what the -- I am looking at the
7 transcript where the request for production 128 was
8 dealt with, and if you would point me to the page
9 reference that I have already seen today, but,
10 unfortunately, I didn't --

11 MR. NELSON: I didn't hear the question. If
12 I would point to the page reference?

13 SPECIAL MASTER POPPITI: Reference to where
14 128 was.

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15 MR. CHRISTENSON: Your Honor, that should
16 be, I believe, at page 128 into 129 of the transcript.

17 MR. NELSON: Your Honor, what you also want
18 to look at is the actual document request, itself.

19 SPECIAL MASTER POPPITI: I have that in
20 front of me.

21 MR. NELSON: Okay.

22 SPECIAL MASTER POPPITI: Let me make this
23 observation: I think it's fair to say that the context
24 of what we were doing when we were looking at the

15

1 theories 126, 127, and 128, it was for purposes of, No.
2 1, my making a ruling, and then it was also for the
3 purpose of you all taking those rulings, having some
4 discussion about the scope of the rulings, and coming up
5 with a path forward is No. 1; is that a fair statement
6 from your respective positions?

7 MR. CHRISTENSON: Your Honor, yes. On page
8 130 at the top, you clearly state, "I will require a
9 meet and confer on the scope of 126 and 127 but not with
10 respect to 128."

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11 SPECIAL MASTER POPPITI: Correct.

12 MR. NELSON: Yes.

13 SPECIAL MASTER POPPITI: And I think it's
14 also fair to say that when we were looking at 128, and
15 looking at 128 now, 128, in its preamble phrase, if you
16 will, says, "All information from January 1, 1997," and,
17 by virtue of that language, I did make the ruling that,
18 with respect to all information, that was simply too
19 broad, it lacked precision, there was no definition, and
20 I wasn't going to entertain that. And I think that's
21 clear from the transcript.

22 What is also clear, by virtue of it not
23 being part of the transcript, unless somebody can point
24 me to the discussion that we had, and if we had it, I

16

1 simply don't recall it and I didn't comb the transcript
2 for purposes of finding it, there was no discussion in
3 this transcript of the last phrase in the interrogatory
4 which says, "Including a sample of each such flat panel
5 display device"; is that fair?

6 MR. NELSON: That's fair, Your Honor.

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7 MR. CHRISTENSON: Your Honor, I agree with
8 that as well, I think, and Mr. Miller, from ViewSonic,
9 at page 125, describes request 128 in terms of what was
10 being sought, and he refers to information relating to
11 etcetera, etcetera.

12 SPECIAL MASTER POPPITI: Right.

13 MR. CHRISTENSON: He does not refer there at
14 all to samples of modules and, presumably, that's why it
15 was not addressed.

16 SPECIAL MASTER POPPITI: Right. So, I mean,
17 I think, for purposes of the record that I am dealing
18 with, the issue with respect to the information, that
19 is, the documents that were being sought, was squarely
20 addressed, discussed, I disposed of it by virtue of
21 issuing a ruling, and with respect to the request for
22 the opportunity to have request samples, I didn't deal
23 with it. It wasn't raised.

24 And if you want to be heard on that issue,

17

1 in other words, why is it unfair to raise the issue of
2 samples now given the fact that what we -- what I think

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3 I am faced with is not an insignificant amount of
4 documents that don't do what, perhaps, each of you
5 expect that they would do; why is it unfair to look at
6 the issue of samples? And maybe it's not. Maybe you
7 both agree it's not. I know ViewSonic agrees it's not.

8 MR. CHRISTENSON: Your Honor, from LPL's
9 perspective, I think that your premise there was that
10 both sides feel that our document production didn't do
11 what we had expected, but I respectfully disagree
12 because --

13 SPECIAL MASTER POPPITI: How do I measure
14 that, Mr. Christenson, without sitting down with you and
15 whether, you know, whether it's going through the one
16 good one and the one that is indescribable to me, how
17 many of those do I have to see before I make a judgment
18 that we should be looking at samples here? All of them?
19 A sampling of them?

20 MR. CHRISTENSON: Your Honor, that is
21 actually a question that I discussed with ViewSonic:
22 What specific samples were they requesting from us? And
23 they had stated they would clarify that.

24 Initially, in the July 27th submission to

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18

1 Your Honor from ViewSonic, on page 2 of that submission,
2 they are requesting samples for what they call prior art
3 products, which are the pre 1999 products.

4 SPECIAL MASTER POPPITI: Right.

5 MR. CHRISTENSON: And, so, we had
6 investigated that and determined that LPL does not
7 maintain an inventory, if you will, of old modules from
8 that time period where they could provide those modules.
9 And, so, the issue that was submitted to you on the July
10 27th letter, I think, is moot because we can't provide
11 the, what they call "prior art module samples."

12 They then, very recently, shifted gears away
13 from that and now they want us to produce samples,
14 apparently, for all the products since 1998 that are
15 reflected in our document production. But, you know,
16 the -- I think it's telling that their initial request
17 to Your Honor in the July 27th submission was for the
18 pre 1999 modules, and only when we determined we don't
19 have those did they then say they want the more recent
20 modules.

21 MS. ROMAN: Your Honor, this is Tracy Roman

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22 on behalf of ViewSonic. Just to be fair, our July 27th
23 submission did make it clear that we were doing the best
24 we could to review the information that had been

19

1 produced at that point in time.

2 Naturally, our primary focus from that
3 information that had been produced was to start with the
4 prior art documents that had been produced. And, so,
5 what we are giving you an update for in the July 27th
6 status report fell under a heading "Lack of information
7 regarding the prior art products."

8 At that time, based on what we could review,
9 we knew that the documents produced for the prior art
10 products were insufficient and that we'd have to be
11 looking at samples.

12 During the meet and confer that I had with
13 Mr. Christenson, he did inquire, Well, are you just
14 limiting this to prior art products?, because it's
15 unclear from your submission, or are you talking about
16 samples for all products? So, there was an ambiguity on
17 both sides. There was no clear understanding on their

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18 part that it was only going to be prior art products.

19 And I am sorry if it communicated that but

20 we did try to make it clear in our July 27th submission

21 that we weren't able to get through everything that had

22 been produced despite how fast we were trying to go

23 through it.

24 So, during that meet and confer, I did say

20

1 that I would look into that and try and clarify it

2 because I was not the one who had been reviewing the

3 documents, so it was unclear to me whether the documents

4 that had been produced relating to post patent filing

5 products were sufficient to disclose the information

6 that we needed to -- in order to resolve the issues for

7 the case.

8 SPECIAL MASTER POPPITI: Mr. Christenson, I

9 don't see this as sandbagging. I mean, this is

10 production that is coming at the time it's coming. It's

11 production that I gather was difficult to get through

12 because some of it was simply not readable, whether "not

13 readable" means there was a lack of information or it

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14 was unclear or it was a bad copy, but it falls into the
15 category that it wasn't worth anything.

16 My concern is -- there are two observations
17 I will make. No. 1, I am satisfied that the issue of
18 samples is something that I didn't rule on. No. 2, I am
19 inclined to -- by "inclined," I will, after I have some
20 further discussion with you, provide the opportunity to
21 receive samples, and the path forward to that, I want
22 some degree of assurance here that either I am going to
23 have to dive into the production, with your respective
24 assistance, so I can see for myself, and I am just not

21

1 sure that that's a good utilization of your time, it's
2 not a good utilization of my time, and I am not sure
3 that the resources that you are going to spend on all of
4 that makes a great deal of sense.

5 I would prefer that you forge, and you know
6 I have done this before, some agreement with respect to
7 samples, understanding that I will make some decision
8 with respect to them, and if I have to tell you, on a
9 date certain not in the distant future, We have got to

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10 gather in a courtroom and you have got to start pointing
11 and clicking for me, we are going to do that.

12 MR. CHRISTENSON: Your Honor, I think I am
13 clear on what you expect and we are still waiting to
14 hear back from LPL to determine, you know, to what
15 extent the more recent products may exist in sample form
16 for which we can make a production.

17 I believe, my understanding is, but I'd like
18 to confirm this, that ViewSonic is amenable to paying
19 for the costs associated with the samples that we would
20 be producing?

21 MS. ROMAN: That is correct. And to
22 expedite it, Cass, if you just provide cost information
23 with a list of products that are available, that would
24 help to speed things along.

22

1 MR. CHRISTENSON: So, Your Honor, we will
2 proceed as you suggested. We will complete our
3 investigation to determine what is available as quickly
4 as we can and we will then promptly discuss that with
5 ViewSonic toward a resolution.

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6 SPECIAL MASTER POPPITI: My remaining
7 question, then, is: Do I need to establish some date
8 parameter, some deadline, some time frames to work
9 within? Do you all want to do that and get back to me
10 and tell me to determine what deadline or what the dates
11 forward are?

12 MS. ROMAN: Your Honor, it's difficult for
13 me to propose a date not knowing the difficulties that
14 Mr. Christenson faces with getting the information he
15 needs from his client. But as you are obviously well
16 aware, we have the August 28th filing for the opening
17 expert report and we do need this in advance of that so
18 our expert can do his evaluation and prepare the report,
19 so we'd certainly like it as quickly and expeditiously
20 as we can.

21 SPECIAL MASTER POPPITI: This is what I'd
22 like to be done: Mr. Christenson, if you could, in
23 communication with your client, discuss what we have
24 just talked about, and within the next several days,

23

1 after having communication with your client, propose a

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2 date when you believe you are going to be able to finish
3 the work, the date will be, in my view, a good faith
4 target, and if the date has to be flipped because it's
5 taking more time, then I am happy to hear that, that
6 it's taking more time and the date has to be flipped and
7 I will honor that taking you at your word. But I think
8 it's important to establish some target date going
9 forward that represents that good faith effort because
10 of the deadline for expert reports that is rapidly
11 approaching.

12 MR. CHRISTENSON: Your Honor, I certainly
13 will proceed as you just instructed. I think that
14 sounds similar to the approach we took last time and we
15 were able to -- I think that worked successfully.

16 Are you asking for a date right now or are
17 you asking us to --

18 SPECIAL MASTER POPPITI: I am asking you to
19 have conversation with your client, or with whomever you
20 need to talk with, about the information you need to
21 gather for purposes of determining what, if any, samples
22 are available.

23 MR. CHRISTENSON: Yes, Your Honor. So we
24 will do that very promptly, and then we can, we will set

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24

1 a timetable and we can make you aware of that.

2 MR. MERIDETH: Just so it's clear, we are
3 talking about inclusive of prior art; am I correct?

4 SPECIAL MASTER POPPITI: Thank you,
5 Mr. Merideth.

6 MR. CHRISTENSON: Yes. With respect to the
7 older models, which are the 1997, 1998 models, as I
8 stated before, there is no inventory of products from
9 which we could produce samples going back that far.

10 My understanding -- and that's an issue we
11 had initially investigated when we received the July 27
12 letter. What I don't know right now is: I am assuming
13 there is some recent product availability of samples. I
14 just don't know the extent of that availability or how
15 far back it goes, but I am checking for the full time
16 period.

17 MR. MERIDETH: I just want to make it clear
18 that the one product that we are particularly concerned
19 about, from Tatung's standpoint, is not the '97 or '98
20 product but is a 1996 product that we identified in our

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21 letter of August 3, 2007, and similar products from that
22 time period.

23 During the testimony of Mr. Kim, he
24 indicated that there was a library of products, and I

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1 assume that you are going to check or have your client
2 check in that library of products, and if stuff has been
3 disposed of, we will have a log of when it was disposed
4 of, and we need to get that.

5 Obviously, this particular module, the
6 LC56N1, is a particularly important piece of prior art.
7 We were able to obtain a sample of that, and you can see
8 from the August 3rd letter how important the sample is
9 versus the incomplete drawing that was provided. And we
10 are assuming that you are going to go back and find that
11 data or tell us why it can't be found and/or has been
12 disposed of.

13 SPECIAL MASTER POPPIT: Mr. Christenson.

14 MR. CHRISTENSON: Yes, Your Honor. The --
15 as I said, we are going to look back for samples for the
16 entire time period. I will reconfirm as to the earlier

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17 products, and if Mr. Merideth could give us the citation
18 to the library of products that he referred to, that
19 would be helpful because I think he might be
20 misconstruing the testimony with respect to the
21 purported library of products. But we will work through
22 those issues, we will check with LPL, we will continue
23 our investigation as promptly as we can, and whatever we
24 can make available, we will try to work out with the

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1 other side and reach a resolution very promptly.
2 SPECIAL MASTER POPPITI: What I do want is,
3 if there are any stumbling blocks along the way, I want
4 you to arrange for a teleconference to get me on the
5 line.

6 MR. MERIDETH: Very well, Your Honor.

7 SPECIAL MASTER POPPITI: Next.

8 MS. ROMAN: I think the next issue flows
9 directly from this very same conversation relates to
10 whether or not the defendants will be allowed to depose
11 a 30(b)(6) witness on behalf of LPL regarding the
12 documents that have been produced and the issues that

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13 arise out of those documents.

14 MR. CHRISTENSON: Your Honor, just to be

15 clear, this is an issue that we feel is not ripe for

16 discussion today. We don't think this is a part of the

17 document production set of issues that was submitted.

18 It's an issue that we have been trying to discuss and we

19 are continuing to discuss with the other side, but we

20 don't think we are at the point right now where it's

21 appropriate to submit to Your Honor because it's not

22 clear to us specifically all the issues that are being

23 sought for a deposition, No. 1, from ViewSonic. And we

24 had a discussion yesterday with ViewSonic where they

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1 said that there are some topics that they think they

2 want to re-pursue with LPL that were previously the

3 subject of testimony, and then they also let us know

4 yesterday, for the first time, there may be additional

5 topics and additional deposition notices that they

6 intend to issue. We haven't seen any of that

7 information.

8 They have agreed to provide us the topics,

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9 but, so far, we don't have that information. We learned
10 yesterday, for the first time, that Tatung apparently
11 also seeks a deposition and we don't know anything about
12 the topics that Tatung is seeking testimony on.

13 MR. MERIDETH: I can clarify that.
14 Specifically, the topics that we feel that we are
15 entitled a 30(b)(6) testimony on are topic No. 8 and
16 topic No. 23 of the prior 30(b)(6) notices.

17 SPECIAL MASTER POPPIT: And I don't have
18 that in front of me, Mr. Merideth.

19 MR. MERIDETH: It refers specifically to
20 prior art.

21 SPECIAL MASTER POPPIT: Okay.

22 MR. MERIDETH: And Mr. Kim and Mr. Chung
23 were unable to adequately respond to those questions,
24 and, indeed, thought that one of the items of prior art

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1 or suggested that one of the items of prior art was a
2 clock radio. And they were inadequate -- they were not
3 prepared to discuss these items and we were not in a
4 position to question them, obviously, because they

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5 hadn't produced the data.

6 We now have it, and it is very clear that,
7 at least as to this one product, the LCO56N1, that we
8 are entitled to question about that.

9 SPECIAL MASTER POPPITI: Let me ask this
10 question, or perhaps make this observation: I don't
11 think that there should be any question that the
12 production, as it is continuing, we all had this
13 conversation many, many months ago where I suggested to
14 you that I would not be surprised, No. 1, that there
15 would be a need for additional discovery, and I said
16 that I would be open to that.

17 It seems to me the best things to do, in
18 light of the deadline, is to, again, without knowing
19 what the topics are going to be, other than the two that
20 were just identified, is to set a deadline for there to
21 be some definition as to what you are all talking about
22 so that if there is a dispute, I can do whatever I need
23 to do to help to resolve the dispute.

24 I don't think I have the kind of information

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1 that would permit me to give other than a guidance or an
2 advisory, and I don't think that's appropriate.

3 I do think, however, that, given my
4 responsibility to manage, we should be talking about a
5 short time frame in terms of coming up with the topics,
6 of coming up with the time frame, and coming up with a
7 number of notices that are going to be issued.

8 MS. ROMAN: Your Honor, I don't disagree,
9 and this is why, during the meet and confer yesterday, I
10 agreed to work as quickly as I could to get those topics
11 pulled together for Mr. Christenson. As I did point out
12 to him, though, it's a little difficult to be all
13 inclusive about the topics without being, unfortunately,
14 overly broad, without knowing what the illegible
15 documents that are going to be replaced are going to
16 look like and what information they might yield or
17 questions they might raise.

18 That said, I think we had two issues during
19 our meet and confer and I think the only reason it was
20 actually being discussed with you today is because it
21 seemed like we were at a standstill as to whether a
22 deposition was even appropriate, period, regardless of
23 what the topics might be.

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24 We did identify categories or general

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1 information topics in both our July 27 and our August
2 3rd submission, and the specific topics that we would
3 notice would fall within that scope, at least, and there
4 might be a couple of others, and those included not only
5 the issue of damages, the invalidity of the patent based
6 on the documents, potential inequitable conduct raised
7 by the documents, and the structure of products, the
8 knowledge of prior art, statements made to the
9 examiners, and, so, I have been going through our
10 previous deposition notices and pulling out the topics
11 that apply to that. But they certainly fall within the
12 scope of at least those that we have listed in there.

13 And during our meet and confer, as I
14 understand it -- and, Mr. Christenson, certainly, please
15 correct me if I was wrong -- but if as I understood it,
16 there was certainly an objection to presenting any
17 witness for deposition based on the general topics that
18 we had put forth in those submissions, and I am not sure
19 providing topics that fall within the scope of that is

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20 going to get us any further along, but I am happy to
21 agree to provide that information by tomorrow with the
22 topics specifically noticed so that we can move this
23 issue along.

24 SPECIAL MASTER POPPITI: Mr. Christenson.

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1 MR. CHRISTENSON: Yes. It is helpful to see
2 what the topics are, as we had discussed, because,
3 depending on topic, No. 1, without knowing the topics,
4 it's hard for us to take a position, specifically, and
5 know what is or is not appropriate. And, furthermore,
6 some of these topics we might be able to resolve short
7 of a deposition and that's something that we have
8 indicated we are willing to do. You know, an obvious
9 example is related to authenticity of documents.

10 So I think it's important not to put the
11 cart before the horse and to know what are the topics
12 specifically and then we can discuss those topics and
13 see to what extent we can resolve the issues.

14 MS. ROMAN: Well, I can provide you the
15 topics by close of business tomorrow California time. I

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16 can try to get it to you sooner, but I know that I have
17 got some people traveling that I have to communicate
18 with on this, so I will do my best to get it before
19 close of business, but certainly by close of business.

20 MR. MERIDETH: We will cooperate with
21 Ms. Roman so we give one combined list. I think it's
22 the easiest way to do it.

23 SPECIAL MASTER POPPITI: That makes a great
24 deal of sense. And turnaround to me, I want, again,

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1 without setting any deadline, the message has to be it
2 has to happen quickly in light of the deadlines that are
3 rapidly approaching. Okay?

4 MS. ROMAN: In that regard, Cass, I am
5 available any day Thursday and Friday for a meet and
6 confer regarding it, so just let me know, once you have
7 had a chance to review the topics, we can make ourselves
8 available.

9 MR. CHRISTENSON: Very good. Thank you.

10 SPECIAL MASTER POPPITI: The only thing you
11 may want to be considering, then, is we may want, and

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12 somebody remind me of this at the end of our work
13 together today, we may want to set a date, whether it's
14 called a status date or whether, call it what we want,
15 with me so that there is something to target, if you
16 will.

17 MS. ROMAN: Yes, Your Honor. I believe that
18 would be appropriate. And I, unfortunately, think we
19 have to put it as early as Monday because if we are
20 going to have a deposition with a witness who is
21 overseas, we are going to need to be making plans and
22 scheduling things soon.

23 SPECIAL MASTER POPPITI: Well, then, let's
24 just pause for a moment. I can do Monday, the 13th. It

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1 would have to be later in the day and I am not going to
2 be able to do anything with whatever submittals you may
3 have until after Friday. So if there were submittals
4 even late Friday, that's fine, or if you expect they are
5 going to be, not going to be significant in terms of the
6 amount of information, if you get them to me first thing
7 our time, on the East Coast, on the 13th, then I should

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8 have sufficient time to look at them and prepare for

9 something around 3:30 or 4:00 on the 13th.

10 MR. CHRISTENSON: Your Honor, just so I

11 understand, working backwards, is the intent, then, to

12 try to have a discussion with you scheduled for

13 Monday --

14 SPECIAL MASTER POPPITI: If there are issues

15 remaining, correct.

16 MR. CHRISTENSON: And submissions, would you

17 want short submissions or do you have a preference as to

18 that?

19 SPECIAL MASTER POPPITI: I think a short

20 submission the morning of should be sufficient.

21 MR. CHRISTENSON: The morning of the 13th,

22 Your Honor?

23 SPECIAL MASTER POPPITI: Yes, either the

24 morning of the 13th or close of business on the 17th

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1 (sic).

2 MR. CHRISTENSON: I just think it might

3 depend on when we are able to have the meet and confer

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4 and when we are able to really crystallize the issues

5 which might not be until the end of this week.

6 SPECIAL MASTER POPPITI: That's fine.

7 That's why I am saying the 13th is fine.

8 MR. CHRISTENSON: Very well. Thank you,

9 Your Honor.

10 SPECIAL MASTER POPPITI: Why don't we do

11 this, then: We will schedule, be on the safe side and

12 schedule it at 4:30; does that give you more than enough

13 time, even after submissions, to try to discuss it?

14 MR. CHRISTENSON: That's fine, Your Honor.

15 Thank you.

16 MS. ROMAN: That time is fine for ViewSonic,

17 Your Honor.

18 SPECIAL MASTER POPPITI: All right. Next,

19 please.

20 MR. CHRISTENSON: Your Honor, I don't know

21 if there are any other issues. I think we have covered

22 the issues in ViewSonic's submission, and if that's

23 true, I can address LPL's submission concerning the OEM

24 documents.

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1 MS. ROMAN: Yes, we believe the issues have
2 been covered.

3 SPECIAL MASTER POPPITI: Okay. Let me just
4 move some things aside. Give me one moment, please. I
5 am going to put you on mute.

6 The next is the status of ViewSonic
7 production of documents from OEMs.

8 MR. CHRISTENSON: Yes, Your Honor. This
9 relates to the documents that ViewSonic was ordered to
10 produce from its OEM suppliers, and the OEM suppliers,
11 as you may recall, are the companies that provide
12 ViewSonic with the display products that ViewSonic sells
13 in the United States which include various accused
14 products relevant to this case.

15 ViewSonic has taken the position that the
16 most relevant or most of the relevant documents that
17 relate to the assembly of their products and the issues
18 in this case are not in ViewSonic's direct custody, but,
19 rather, are in the possession of ViewSonic's OEMs.

20 And in February of 2007, Your Honor
21 concluded that, under the contracts between ViewSonic
22 and the OEMs, ViewSonic has control over the documents

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23 by virtue of clear contractual provisions that provide

24 ViewSonic with the right to demand and obtain the

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1 documents from its OEMs. Your Honor issued a ruling

2 concluding that ViewSonic should produce those documents

3 and that was appealed to the Court.

4 Recently, Judge Farnan has adopted Your

5 Honor's rulings and the reasoning set forth in your

6 rulings and confirmed that those documents should be

7 produced. The deadline for production was July 18, I

8 believe.

9 We received a very limited production

10 consisting of approximately 180 pages, all of which

11 related to a single OEM company, Arima, A-r-i-m-a,

12 Computer Corporation. There were approximately 17 other

13 OEM suppliers that ViewSonic contacted for all of the

14 other suppliers; however, we have not received any

15 document production, and for only one of those OEMs did

16 we receive any response to ViewSonic's request for

17 documents, and that was a -- we noted that in a

18 footnote.

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19 One of the OEMs sent a letter to ViewSonic
20 refusing to produce documents, stating there was no
21 operative agreement between that OEM and ViewSonic. But
22 for the other OEMs that were presumably contacted by
23 ViewSonic, there is no response that we have seen, at
24 least no written response.

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1 ViewSonic originally produced copies of the
2 correspondence that were not signed or dated. They
3 subsequently produced topics of what appear to be the
4 actual correspondence between ViewSonic and the OEMs,
5 and what we have determined, reviewing that
6 correspondence, is that ViewSonic -- we think that the
7 request for documents that ViewSonic sent to the OEMs is
8 not sufficient. There is no question, at this point,
9 that ViewSonic has a contractual right to obtain the
10 documents.

11 I, in reviewing the record, it appears clear
12 to me that the expectation was that ViewSonic would make
13 a demand for the documents, and when we reviewed the
14 March 2007 letter, it was a form letter in March 2007

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15 that ViewSonic sent, it is simply a request. It's not a
16 true legal demand for documents. It does not refer to,
17 specifically, the OEM agreement. It does not
18 specifically invoke any rights under the agreement.

19 And, so, we feel -- and given the context of
20 the letter, which includes that ViewSonic was objecting,
21 that it states that the documents were due to be
22 produced in February, whereas, the letter was dated in
23 March, which suggests it could be construed as moot, and
24 for the other reasons we set forth in our August 3rd

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1 letter to Your Honor, we feel that ViewSonic has not
2 taken sufficient steps to obtain the documents, and, so,
3 what we are asking is for Your Honor to require
4 ViewSonic to make a more appropriate and clear demand,
5 exercising the rights that they have under those
6 contracts, so that we can get these very important
7 documents that ViewSonic does not have.

8 We learned yesterday, from ViewSonic's
9 counsel, that, apparently, ViewSonic is in the process
10 of preparing a follow-up letter to the OEMs, but we

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11 haven't seen that letter. I am not sure if that letter
12 has gone out or not. And we are very concerned, at this
13 point, with the status of the OEM production.
14 MS. ROMAN: Your Honor, unfortunately, I did
15 indicate to Mr. Christenson, that, while I am trying to
16 confirm whether that second letter has gone out, the
17 general counsel for ViewSonic is traveling and I haven't
18 been able to get confirmation of it or not. But this
19 was certainly one of the primary concerns at the time
20 when we discussed this at the, I believe it was the
21 January 3rd hearing, we were concerned with what was
22 going to happen once we requested the documents and the
23 OEMs chose to ignore us, that we would be in a difficult
24 position because how do we compel production of the

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1 documents from the OEMs?
2 A letter that went out to the OEMs very
3 clearly stated, "While we intend to appeal this order,
4 we must collect and prepare the requested documents for
5 production. Accordingly, ViewSonic hereby requests that
6 you immediately provide us with copies of all responsive

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7 documents for production, to wit, LPL, that relate to
8 any of the ViewSonic products set forth on the
9 accompanying lists." We even indicated to them that the
10 documents needed to be provided in their native format
11 and include any electronic data.

12 Certainly, the letter did not reference the
13 contract, but it didn't need to. Your Honor's order
14 clearly referenced the contract, and as Mr. Christenson
15 just pointed out, one of the OEMs did respond that he
16 had read through Your Honor's order, which was clearly
17 based on the existence of the written contract
18 compelling the production of the documents, and since no
19 contract existed, they weren't going to respond.

20 So, we believe that we have complied with
21 the order as it was written and that the follow-up after
22 it, that I have mentioned to Mr. Christenson, that I
23 believe was taking place to send another letter,
24 shouldn't determine whether or not the effort that has

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1 already been made is already sufficient.

2 SPECIAL MASTER POPPITI: So you are

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3 suggesting I don't need to see the second letter?

4 MS. ROMAN: No, Your Honor. It's my

5 understanding that the second letter was simply a

6 follow-up based on the fact that the Court had accepted

7 Your Honor's report and recommendation and it was simply

8 to remind them that this had been done and that we

9 needed these documents.

10 I don't think, honestly, that it would have

11 made a difference for the production of the documents

12 given the very clear instruction in our first letter

13 which said we need to collect these and you need to

14 immediately provide us with copies of them and the lack

15 of response from the OEMs.

16 SPECIAL MASTER POPPIT: Well, let me

17 suggest this: I would expect that if any one of you,

18 any one of you that is involved with this

19 teleconference, were asked to make the demand or the

20 request consistent with an order of the Court, that we

21 would wind up with -- and I didn't count the number of

22 us participating -- we would wind up with a different

23 product from each one of us.

24 Some may couch it in terms of, I demand it

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1 by virtue of our contractual relationship; some may
2 couch it in terms of, Here is the Court's order, send it
3 to me.

4 My concern, as articulated in the January
5 3rd hearing, as quoted in LPL's correspondence of August
6 3rd, and I expect it would be helpful to read it for
7 purposes of today's record -- and I realize this is only
8 a part of it and I did not go back to the January 3rd
9 hearing to revisit any of other language; if you think
10 it's important to do that, then please point out that
11 language and I will pull the transcript -- but the
12 language quoted in LPL's letter for submittal of August
13 3rd, This ends up back on my desk with respect to the
14 third parties abrogating their responsibility under the
15 contract. The only thing I certainly would expect I
16 would kindly ask for is the nature of the request made
17 and the expect that the nature of the request is a pure
18 and simple request. There is nothing that is in the
19 file or the developed file which would suggest that
20 ViewSonic is standing in the way of that production
21 and/or suggesting that the OEM be accountable.

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22 I don't see anything in this letter of
23 ViewSonic soft balling it. I don't know that, by virtue
24 of ViewSonic adding a phrase to say, By the way, you are

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1 required to do it under our contract, adds anything to
2 the letter because the order reviewed all of that. So,
3 I am not -- on the record that I have before me, I am
4 satisfied that an appropriate request was made, request,
5 demand, I don't really see that there be any difference
6 in the context of the way this is teed up.

7 I'd like to see the second request for
8 purposes of seeing what the follow-up was. If the
9 follow-up is consistent in its language with its first
10 request, then I think it just buttresses my view that
11 the -- it is what it is. It's one step removed. I
12 expect that ViewSonic could force an issue independent
13 of this court action somewhere else, but I don't -- I
14 didn't contemplate that and I really don't anticipate
15 that Judge Farnan would have contemplated that by virtue
16 of accepting my findings and recommendations.

17 So, on this record, I am not convinced that

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18 ViewSonic didn't make an appropriate effort to get the
19 information from the OEM.

20 I do, however, want to see the follow-up.

21 MS. ROMAN: Your Honor, I will get the
22 follow-up, as I told Mr. Christenson, as soon as I can
23 get it; I will produce it to him as well, and I will
24 continue making those efforts today to get it as soon as

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1 possible. The truth is, Your Honor, I don't even know
2 if the follow-up letter has even gone out --

3 SPECIAL MASTER POPPITI: Okay.

4 MS. ROMAN: -- given the general counsel's
5 traveling, and I don't know if he has been able to
6 authorize it being sent.

7 SPECIAL MASTER POPPITI: I understand. I'd
8 like to see whatever is done.

9 MS. ROMAN: Yes, Your Honor.

10 SPECIAL MASTER POPPITI: Just a moment.

11 Next, please.

12 MS. BRZEZYNSKI: I believe the next issue is
13 LPL's request for a protective order relating to